



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 08.02.2021

DATE ON WHICH PRONOUNCED : 05.03.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P. (MD)No.16970 of 2017

and

Crl.MP (MD)Nos.11169 & 11170 of 2017

R.Sundar ... Petitioner/Accused

Vs.

M/s.Agarwal Coal Corporation Pvt Ltd.,
Through its power agent,
Amresh Choudhary,
S/o.Satyendra Choudhary,
Tuticorin Branch Deputy Manager,
Branch office at:
No.5/518, Arun Nagar,
Caldwell Colony,
Tuticorin-8.

... Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 Criminal Procedure Code, to call for the entire records, relating to the impugned proceedings in C.C.No.202 of 2016 on the file of the learned Fast Track (Magistrate Level), Tuticorin and to quash the same.

For Petitioner : Mr.M.S.Jeyakarthik
For Respondent : Mr.L.Shaji Chellan

ORDER

This Criminal Original Petition has been to quash the impugned proceedings in C.C.No.202 of 2016 on the file of the learned Fast Track (Magistrate Level), Tuticorin.

2. Brief facts of the case:-

(i) The respondent is a private limited Company, which was incorporated under the provision of Indian Companies Act, and it is represented by the power of attorney namely, Amresh Choudhary, he is the proprietor of the Company. The petitioner herein, who is the accused before the Trial Court is the sole proprietor of 'Hari Traders' and the petitioner used to purchase steam (non-cooking coal) of Indonesian origin from the respondent and payments were paid at regular intervals.



(ii) From the year 2013, the petitioner herein, purchased steam (non-cooking coal) of Indonesian origin from the complainant's Company under various invoices on various dates, which were mentioned as detailed in the complaint. As per the statement of account as on 24.12.2015, total amount Rs.30,10,574/- is due. Towards, the discharge of the amount, the accused issued two post dated cheques, bearing Nos.001264 and 001265 drawn on City Union Bank Ltd, Tirunelveli Branch, for a sum of Rs.10,00,000/- in favour of the respondent's Company, dated 31.12.2015. On that date, the accused requested the complainant to present the cheques on 28.03.2016. In the mean time, the accused paid a sum of Rs.8,50,000/- on various dates and so, the total amount liable to pay is Rs.21,60,574/-. On that basis, he requested the complainant to submit the cheques for collection on 28.03.2016. It was represented for collection on 28.03.2016, through UCO Bank, Tuticorin Branch and the same were returned on 29.03.2016, with an endorsement as 'funds insufficient'. So, notice was issued to accused on 14.04.2016. But, there was no reply and no payment from the accused. With this allegation, the respondent filed a private complaint before the Trial Court.

3. To quash the private complaint, the accused is before this Court, mainly on the ground that he is added in his individual capacity in the criminal complaint and in the absence of his Company namely, 'Hari Traders', the complaint is not maintainable.

4. It is the contention on the part of the respondent that the petitioner is the sole proprietor of the concern called 'Hari Traders' and it is not a incorporated Company under the provision of Indian Companies Act, 2013. So, the question of adding Company will not arise since the proprietor and the concern are one and the same in the legal sense and the Company, which is incorporated under the Provisions of Companies Act, will be a separate legal entity from that of its share holders. So, on that ground, the learned counsel for the respondent would submit that the complaint is very well maintainable and there is no legal bar.

5. Per contra, the learned counsel for the petitioner would submit that it is a Company, which was registered under the Government of Tamilnadu Commercial Tax Department as ' Hari Traders' and so, the Company must be arrayed as a party. For that purpose, he would rely upon the judgment of the Hon'ble Supreme Court reported in **Himanshu Vs B.Shivamurthy & Another** and he highlighted the following observations:-

" The provisions of Section 14 postulate that if the person committing an offence under Section 138 is a Company, every person, who at the time when the offence was committed was in charge of or



was responsible to the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished.

In the absence of the company being arraigned as an accused, a complaint against the appellant was therefore not maintainable."

6. Even though, it is a settled law that a company, which is incorporated under the Companies Act, is a separate legal entity, but, a sole proprietorship is concerned, it is not so. Mere registration of trader with the Government of Tamilnadu Commercial Tax Department in the name of 'Hari Treders', will not be construed as a company incorporated under the provisions of Companies Act.

7. Moreover, it has been registered only as a dealer as per Form-B, the Certificate of Registration, which is intended for satisfying the provision of Central Sales Tax Act, 1956. So, the contention on the part of the petitioner is not legally sustainable and being a sole proprietorship adding the concern as a party does not arise. The petitioner being the sole proprietor, issued cheques towards discharge of his liability. So, the ground made by the petitioner is not sustainable and accordingly, it is rejected and the complaint filed by the respondent is held to be proper and maintainable and no ground has been made out for quashing the complaint.

8. In the result, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dss

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

The Fast Track Court,
(Magistrate Level),
Tuticorin.

+1 CC to MR.L.SHAJI CHELLAN, Advocate (SR-9121[F] dated
05/03/2021)

+1 CC to MR.M.S.JEYAKARTHIK, Advocate (SR-9528[F] dated
09/03/2021)

CrI.O.P. (MD)No.16970 of 2017
and
CrI.MP (MD)Nos.11169 & 11170 of 2017
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KM (22.03.2021) 4P 4C